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Corona (Acting Chairperson),[*] *Velasco, Jr.,*[**] *Brion,*[***] and *Bersamin, JJ.,* concur.

SECOND DIVISION

[G.R. No. 172885. October 9, 2009]

MANUEL LUIS S. SANCHEZ, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, Represented by the Department of Education, Culture and Sports,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; LIABILITY OF DIRECTORS, TRUSTEES OR OFFICERS; RESPONDENT DOES NOT HAVE TO INVOKE THE DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; SECTION 31 OF THE CORPORATION CODE, UNDER WHICH THE CASE WAS BROUGHT, LAYS DOWN THE CORPORATE OFFICERS' LIABILITY FOR DAMAGES ARISING FROM THEIR GROSS NEGLIGENCE OR BAD FAITH IN DIRECTING CORPORATE AFFAIRS.— Section 31 of the Corporation Code makes directors-officers of corporations jointly and severally liable even to third parties for their gross negligence or bad faith in directing the affairs of their corporations. Thus: Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or **who are guilty of gross negligence or bad faith in directing the affairs of**

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[*] Acting Chairperson as per Special Order No. 724.

[**] Additional member as per Special Order No. 719.

[***] Additional member as per Special Order No. 725-A.

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the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. x x x The DECS does not have to invoke the doctrine of piercing the veil of corporate fiction. Section 31 above expressly lays down petitioner Sanchez and Kahn's liability for damages arising from their gross negligence or bad faith in directing corporate affairs. The doctrine mentioned, on the other hand, is an equitable remedy resorted to only when the corporate fiction is used, among others, to defeat public convenience, justify wrong, protect fraud or defend a crime. Moreover, in a piercing case, the test is complete control or domination, not only of finances, but of policy and business practice in respect of the transaction attacked. This is not the case here. Section 31, under which this case was brought, makes a corporate director accountable for his management of the affairs of the corporation.

2. ID.; ID.; ID.; BAD FAITH AND GROSS NEGLIGENCE, HOW COMMITTED.— Bad faith implies breach of faith and willful failure to respond to plain and well understood obligation. It does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will. It partakes of the nature of fraud. Gross negligence, on the other hand, is the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them; the want or absence of or failure to exercise slight care or diligence, or the entire absence of care.

3. ID.; ID.; ID.; PETITIONER ACTED IN BAD FAITH, IF NOT WITH GROSS NEGLIGENCE, IN FAILING TO PERFORM HIS DUTY TO REMIT TO RESPONDENT OR KEEP IN SAFE HANDS THE UNIVERSITY'S INCOMES FROM THE LEASES.— The Court of Appeals found that from January 1992 to January 1996, after ULFI's authority to manage the Complex expired and despite the ejectment suit that the DECS filed

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against it, petitioner Sanchez and Kahn still continued to lease spaces in those facilities to third persons. And they collected and kept all the rents although they knew that these primarily belonged to the DECS. ULFI had merely managed the facilities and collected earnings from them for the DECS. What is more, Sanchez and Kahn were aware that they had to submit written accounts of those rents and remit the net earnings from them to the Bureau of Treasury, through the DECS, at the end of the year. Yet, Sanchez and Kahn, acting in bad faith or with gross neglect did not turn over even one centavo of rent to the DECS nor render an accounting of their collections. Nor did they account for the money they collected by submitting to the Securities and Exchange Commission the required financial statements covering such collections. Parenthetically, a witness for the defense, Evangeline Naniong, ULFI's bookkeeper, testified that the revenues from the rents were deposited in the bank in the names of Sanchez and ULFI's accountant. And so only they could withdraw and spend those revenues. Petitioner Sanchez of course claims that the funds they had collected proved inadequate even to meet expenses. But, as the appellate court held, he had been unable to substantiate such claims. As the officer charged with approving and implementing corporate disbursements, Sanchez had the duty to present documents showing how the incomes of the foundation were spent. But he failed to do so even after the DECS, which took custody of the records, asked Kahn to submit a list of the documents they needed for establishing their defenses so these may be made available to them. Under the circumstances, the indubitable conclusion is that petitioner Sanchez and Kahn acted with bad faith, if not with gross negligence, in failing to perform their duty to remit to DECS or keep in safe hands ULFI's incomes from the leases. Section 31 lays down the "doctrine of corporate opportunity" and holds personally liable corporate directors found guilty of gross negligence or bad faith in directing the affairs of the corporation, which results in damage or injury to the corporation, its stockholders or members, and other persons. The ejectment suit that held only ULFI liable to the DECS for unpaid rents does not constitute *res judicata* to the issue of personal liabilities of Kahn and petitioner Sanchez under the circumstances to pay such obligations, given that the unaccounted funds would have settled the same.

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APPEARANCES OF COUNSEL

Atencia and Associates Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

ABAD, *J.*:

This petition for review on *certiorari* assails the February 21, 2006 Decision[1] of the Court of Appeals in CA-G.R. CV 83648 and its Resolution[2] of May 29, 2006, which dismissed the petitioner's appeal from the decision of Branch 71 of the Regional Trial Court (RTC) of Pasig City in Civil Case 66852.

The Facts and the Case

In 1980, during the regime of President Ferdinand E. Marcos, the government-owned Human Settlements Development Corporation (HSDC) built with public funds and on government land the St. Martin Technical Institute Complex at Barangay Ugong, Pasig City. This later on became known as the University of Life Complex.

In July 1980, First Lady Imelda R. Marcos and others organized the University of Life Foundation, Inc. (ULFI), a private non-stock, non-profit corporation devoted to non-formal education. On August 26, 1980 the government gave the management and operation of the Complex to ULFI but HSDC was to continue to construct facilities and acquire equipment for it. Although ULFI was to get all the incomes of the Complex, ULFI had to pay HSDC an annual fee of 14 percent of HSDC's investments in it.

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[1] *Rollo*, pp. 35-55; penned by Associate Justice Renato C. Dacudao, and concurred in by Associate Justices Hakim S. Abdulwahid and Celia C. Librea-Leagogo.

[2] *Id.* at 56; penned by Associate Justice Renato C. Dacudao, and concurred in by Associate Justices Hakim S. Abdulwahid and Celia C. Librea-Leagogo.

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After the fall of the Marcos regime in 1986, the new government reorganized HSDC into the Strategic Investment Development Corporation (SIDCOR) under the supervision of the Office of the President. Realizing that ULFI never paid the 14 percent annual fee due to HSDC, now totaling about ₱316 million, on July 25, 1989 SIDCOR rescinded the HSDC-ULFI agreement. Ironically, in its place, SIDCOR entered into an Interim Management Agreement with ULFI, allowing it to continue managing and operating the Complex.

Meantime, in October 1989, the government transferred the ownership of ULFI's properties to the Department of Education, Culture and Sports (DECS). Later in January 1990, Republic Act 6847 transferred full control and management of the Complex to DECS with effect two years from the law's enactment. The DECS transferred its offices to the Complex in December 1990. On January 29, 1991, SIDCOR transferred all its rights in the Complex to the National Government which in turn transferred the same to the DECS.

On January 31, 1991 DECS and ULFI entered into a Management Agreement, granting ULFI the authority to manage and operate the Complex until the end of that year. During this period, ULFI was expressly mandated under the said Management Agreement to remit to the Bureau of the Treasury, through the DECS, all incomes from the Complex, net of allowable expenses.[3] At the end of 1991, the DECS gave ULFI notice to immediately vacate the Complex. But ULFI declined, prompting the DECS to file an action for unlawful detainer against it in Civil Case 2959 of the Metropolitan Trial Court (MeTC) of Pasig City. After hearing, MeTC dismissed the action for lack of merit. On the DECS's appeal to the RTC, the latter affirmed the order of dismissal.

On appeal of the DECS to the Court of Appeals by petition for review,[4] however, the latter rendered judgment on January 17, 1995, reversing the MeTC and RTC decisions. The appeals

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[3] *Id.* at 52.

[4] Docketed as CA-G.R. SP 35141.

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court ordered ULFI to vacate the Complex and pay such reasonable rentals as the MeTC might fix. This Court dismissed ULFI's recourse to it from the judgment of the Court of Appeals.[5]

On April 15, 1996 the MeTC fixed, after hearing, the rents that ULFI had to pay the DECS at ₱22,559,215.14 (due from February 1992 to January 1996) plus ₱6,325.00 per month until it shall have vacated the premises.[6] The DECS succeeded in ejecting ULFI but the latter did not pay the amounts due from it.

On June 15, 1998 the DECS filed a complaint[7] before the RTC of Pasig City in Civil Case 66852 for collection of the ₱22,559,215.14 in unremitted rents and damages against Henri Kahn, ULFI's President, and petitioner Manuel Luis S. Sanchez, its Executive Vice-President, based on their personal liability under Section 31 of the Corporation Code. The latter two were Managing Director and Finance Director, respectively, of the corporation.[8]

The complaint alleged that Kahn and petitioner Sanchez, as key ULFI officers, were remiss in safekeeping ULFI's corporate incomes and in accounting for them.[9] They neither placed the incomes derived from the Complex in ULFI's deposit account nor submitted the required financial statements detailing their transactions. The underlying theory of the case is that Kahn and Sanchez "operated ULFI as if it were their own property, handled the collections and spent the money as if it were their personal belonging."[10] The DECS asked the RTC to order Kahn

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[5] *Via* Resolution of January 15, 1996 in G.R. No. 122450.

[6] *Rollo*, pp. 57-58.

[7] *Id.* at 59-67; docketed as Civil Case 66852, RTC of Pasig City, Branch 71.

[8] Defense witness Evangeline Naniong testified that the staff of ULFI were hired by Managing Director Kahn and Finance Director Sanchez.

[9] *Rollo*, p. 62.

[10] Records, p. 146; Opposition to Motion to Dismiss in Civil Case 66852, p. 6.

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and Sanchez personally to pay it the ₱22,559,215.14 in rents due from ULFI with legal interest, exemplary damages of ₱1,000,000.00, attorney's fees of ₱500,000.00, and costs.

In his answer, petitioner Sanchez alleged that, being a mere officer of ULFI, he cannot be made personally liable for its adjudged corporate liability. He took exception to the complaint, characterizing it as an attempt to pierce the corporate veil that cloaked ULFI.

Satisfied that the DECS fully established its case, on October 14, 2002, the RTC rendered judgment, ordering Kahn and petitioner Sanchez to pay the DECS, jointly and severally, ₱22,559,215.14 with legal interest from April 1, 1996 until they shall have fully paid the same, ₱500,000.00 in exemplary damages, and ₱200,000.00 in attorney's fees, plus costs.[11]

Both Kahn and petitioner Sanchez appealed to the Court of Appeals. The latter court gave due course to Sanchez's appeal but denied that of Kahn since it was filed out of time. On February 21, 2006 the Court of Appeals rendered judgment, wholly affirming the trial court's decision,[12] hence, this petition.

In a nutshell, Sanchez argues that he cannot be made personally liable for ULFI's corporate obligations absent specific allegations in the complaint and evidence adduced during trial that would warrant a piercing of the corporate veil. He further argues that the DECS is barred by *res judicata* and forum shopping from collecting from him what it could not get by execution from ULFI under the judgment in the ejectment case. Finally, he claims that because ULFI suffered losses in operations during the period 1992 up to 1996, there could have been nothing left of the rentals it collected from the lessees of the Complex.

The DECS points out, on the other hand, that since Kahn and petitioner Sanchez were guilty of fraud and bad faith in managing the funds of ULFI, they can be made to personally answer for those funds and to pay its corporate obligations

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[11] *Rollo*, pp. 84-100.

[12] *Id.* at 55.

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pursuant to Section 31 of the Corporation Code. They collected money from rents but did not, as was their duty, remit this to the DECS pursuant to the DECS-ULFI agreement.

The Issues

The case before this Court presents the following issues:

1. Whether or not petitioner Sanchez, a director and chief executive officer of ULFI, can be held liable in damages under Section 31 of the Corporation Code for gross neglect or bad faith in directing the corporation's affairs; and

2. Whether or not the action in Civil Case 66852 is barred by *res judicata* and constitutes forum shopping by the DECS.

Rulings of the Court

Petitioner Sanchez points out that the Court of Appeals' decision arbitrarily changed the DECS's theory of the case from one based on his and Kahn's alleged failure to deposit for the account of ULFI whatever rentals they have collected to another based on their alleged failure to remit to the DECS the incomes of the facilities they managed. But Sanchez is drawing insignificant distinctions from what the DECS claims and what the court below finds. Both essentially rest on Kahn and Sanchez's failure to account for the rent incomes that they collected from lease of spaces in the facilities of the Complex beyond the one-year management authority that the DECS granted ULFI in 1991.

Petitioner Sanchez claims that there is no ground for the courts below to pierce the veil of corporate identity and hold him and Kahn, who were mere corporate officers, personally liable for ULFI's obligations to the DECS. But this is not a case of piercing the veil of corporate fiction. The DECS brought its action against Sanchez and Kahn under Section 31 of the Corporation Code, which should not be confused with actions intended to pierce the corporate fiction.

Section 31 of the Corporation Code makes directors-officers of corporations jointly and severally liable even to third parties

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for their gross negligence or bad faith in directing the affairs of their corporations. Thus:

> Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or **who are guilty of gross negligence or bad faith in directing the affairs of the corporation** or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. (Emphasis supplied)
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The DECS does not have to invoke the doctrine of piercing the veil of corporate fiction. Section 31 above expressly lays down petitioner Sanchez and Kahn's liability for damages arising from their gross negligence or bad faith in directing corporate affairs. The doctrine mentioned, on the other hand, is an equitable remedy resorted to only when the corporate fiction is used, among others, to defeat public convenience, justify wrong, protect fraud or defend a crime.[13]

Moreover, in a piercing case, the test is complete control or domination, not only of finances, but of policy and business practice in respect of the transaction attacked.[14] This is not the case here. Section 31, under which this case was brought, makes a corporate director–who may or may not even be a stockholder or member–accountable for his management of the affairs of the corporation.

Bad faith implies breach of faith and willful failure to respond to plain and well understood obligation.[15] It does not simply connote bad judgment or negligence; it imports a dishonest purpose

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[13] *Manila Hotel Corporation v. National Labor Relations Commission*, 397 Phil. 1, 18 (2000).

[14] *Light Rail Transit Authority v. Venus, Jr.*, G.R. No. 163782, March 24, 2006, 485 SCRA 361, 373.

[15] 5 Words and Phrases 14, citing *Nelson v. Board of Trade*, 58 Ill. App. 399 (1895).

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or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will.[16] It partakes of the nature of fraud.[17]

Gross negligence, on the other hand, is the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected.[18] It evinces a thoughtless disregard of consequences without exerting any effort to avoid them;[19] the want or absence of or failure to exercise slight care or diligence, or the entire absence of care.[20]

In resolving the issue of whether or not petitioner Sanchez, a director and chief executive officer of ULFI, can be held liable in damages under Section 31 of the Corporation Code for bad faith or gross neglect in directing the corporation's affairs, the Court will consider only the Court of Appeals' findings of facts. This Court's jurisdiction in a petition for review on *certiorari* under Rule 45 is limited to reviewing only errors of law. It is bound by the findings of fact of the Court of Appeals.

The Court of Appeals found that from January 1992 to January 1996, after ULFI's authority to manage the Complex expired and despite the ejectment suit that the DECS filed against it, petitioner Sanchez and Kahn still continued to lease spaces in those facilities to third persons. And they collected and kept all the rents although they knew that these primarily belonged to the DECS. ULFI had merely managed the facilities and

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[16] *Board of Liquidators v. Heirs of M. Kalaw*, 127 Phil. 399, 421 (1967).

[17] *Fonacier v. Sandiganbayan*, G.R. No. 50691, December 5, 1994, 238 SCRA 655, 687; *Spiegel v. Beacon Participations*, 8 NE 2nd Series, 895, 1007.

[18] *Fernando v. Sandiganbayan*, G.R. No. 96182, August 19, 1992, 212 SCRA 680, 691, citing *Ballentine's Law Dictionary*, 3rd ed., p. 537.

[19] *Citibank, N.A. v. Gatchalian*, 310 Phil. 211, 218 (1995).

[20] *National Bookstore, Inc. v. Court of Appeals*, 428 Phil. 235, 245 (2002).

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collected earnings from them for the DECS. What is more, Sanchez and Kahn were aware that they had to submit written accounts of those rents and remit the net earnings from them to the Bureau of Treasury, through the DECS, at the end of the year. Yet, Sanchez and Kahn, acting in bad faith or with gross neglect did not turn over even one centavo of rent to the DECS nor render an accounting of their collections. Nor did they account for the money they collected by submitting to the Securities and Exchange Commission the required financial statements covering such collections.

Parenthetically, a witness for the defense, Evangeline Naniong, ULFI's bookkeeper, testified that the revenues from the rents were deposited in the bank in the names of Sanchez and ULFI's accountant. And so only they could withdraw and spend those revenues.[21]

Petitioner Sanchez of course claims that the funds they had collected proved inadequate even to meet expenses. But, as the appellate court held, he had been unable to substantiate such claims. As the officer charged with approving and implementing corporate disbursements, Sanchez had the duty to present documents showing how the incomes of the foundation were spent. But he failed to do so even after the DECS, which took custody of the records, asked Kahn to submit a list of the documents they needed for establishing their defenses so these may be made available to them.[22] Under the circumstances, the indubitable conclusion is that petitioner Sanchez and Kahn acted with bad faith, if not with gross negligence, in failing to perform their duty to remit to DECS or keep in safe hands ULFI's incomes from the leases.

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[21] RTC Decision, *rollo*, p. 91.

[22] In the court *a quo*, Kahn filed a motion to compel the DECS to release ULFI documents left in the University of Life Complex after ULFI was successfully evicted. To this, the DECS filed a motion for bill of particulars requesting Kahn to state with definiteness or particularity what documents and personal property he sought to have the DECS release. The trial court gave Kahn and Sanchez ten (10) days to comment thereon, but they did not. As a result, Kahn's motion was denied.

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Section 31 lays down the "doctrine of corporate opportunity" and holds personally liable corporate directors found guilty of gross negligence or bad faith in directing the affairs of the corporation, which results in damage or injury to the corporation, its stockholders or members, and other persons. The ejectment suit that held only ULFI liable to the DECS for unpaid rents does not constitute *res judicata* to the issue of personal liabilities of Kahn and petitioner Sanchez under the circumstances to pay such obligations, given that the unaccounted funds would have settled the same.

Petitioner's allegations of forum shopping must fail as well. The essence of forum shopping is the filing of multiple suits involving the same parties for the *same cause of action*, either simultaneously or successively, for the purpose of obtaining a favorable judgment.[23] This is not the case with respect to the ejectment suit *vis-à-vis* the action for damages.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the February 21, 2006 Decision of the Court of Appeals in CA-G.R. CV 83648 and its Resolution of May 29, 2006.

SO ORDERED.

Corona,[*] *Carpio Morales,*[**] *Chico-Nazario,*[***] and *Brion, JJ.,* concur.

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[*] Designated as additional member in lieu of Associate Justice Leonardo A. Quisumbing, per Special Order No. 718 dated October 2, 2009.

[**] In lieu of Associate Justice Leonardo A. Quisumbing, per Special Order No. 690 dated September 4, 2009.

[***] Designated as additional member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 737 dated October 12, 2009.

[23] *Lim v. Montano*, A.C. No. 5653, February 27, 2006, 483 SCRA 192, 200.